REMARKS

Claims 4, 6-8 and 10-18 are pending and stand ready for further action on the merits. No new matter has been added by way of the above-amendment.

Issues Under 35 U.S.C. §103

Claims 4, 8, 10, 11, 13, 16 and 18 are rejected under 35 U.S.C. §103(a) as being unpatentable over Eibner et al. (GB 2116960). Applicants respectfully traverse the rejection.

The advantages of the present invention, as described in the April 29, 2002 Amendment, is now reiterated for the Examiner's convenience.

> The present invention is drawn to a plant-activating agent, a composition comprising the plant-activating agent and a method of using the agent or composition for activating plants by applying the agent or composition to a plant. The advantage of the inventive agent is that it works to promote the growth of the plant by itself and not *solely* to increase the efficiency at which other components of the composition are absorbed in the plant. As such, the inventive plant-activating agent/composition: a) promotes the green-degree of the leaves of the plant; b) heightens the efficiency for absorbing the fertilizer; c) increases the leaf-area; and d) increases the root power while not causing chemical injury to the plant.

Eibner et al. -

Eibner et al. teach a plant promoting preparation having a controlled release rate of the nutrients wherein the plant promoting preparation has a plant promoting agent which is in a fertilizer which can possibly be enveloped with an enveloping agent. As an enveloping agent, Eibner et al. teach a laundry list of possible compositions, including metal soaps. As examples of metal soaps, Eibner et al. suggest Mg-, Ca-, Fe-, Cu-, Zn-, Mn-, Zr- or Al-salts of lauric acid, myristic acid, palmitic acid, stearic acid or oleic acid, see page 3, lines 15-17.

In light of Applicant's arguments, the Examiner has maintained the position that Eibner et al. fairly suggest the use of the metal soaps in the plant promoting preparation.

In response, Applicants have amended claims 4, 8 and 10 to not include metal soaps. In other words, in the compound of inventive Formula (II), $RCOO(AO)_nX^1$, X^1 does not include a counter ion as a possibility.

Applicants respectfully submit that the presently claimed method and plant-activating composition are not made obvious by Eibner et al., since Eibner et al. fail to teach or suggest that the fertilizer can be enveloped with an enveloping agent of inventive Formula (II), $RCOO(AO)_nX^1$, wherein X^1 represents a hydrogen atom, an alkyl or acyl group having 1 to 30 carbon atoms or an alkenyl group having 2 to 30 carbon atoms.

As the MPEP directs, all the claim limitations must be taught or suggested by the prior art to establish a *prima facie* case of obviousness. See MPEP § 2143.03. Since Eibner et al. does not teach the inventive plant activating agent of Formula (II), a *prima facie* case of obviousness cannot be said to exist, and withdrawal of the rejection is respectfully requested.

Information Disclosure Statement (IDS)

On July 31, 2002, Applicants timely filed an IDS with the U.S. Patent and Trademark Office. The Examiner is requested to initial and sign the PTO-1449 Form enclosed with the July 31, 2002 IDS and forward the signed copy with the next communication.

Conclusion

In view of the above amendments and comments, Applicants respectfully submit that the claims are in condition for allowance. However, should the Examiner find to the contrary, Applicants respectfully request that the Examiner enters this Amendment into the official record for placing the claims in better form for appeal.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Garth M. Dahlen, Ph.D. (Reg. No. 43,575) at the telephone number of the undersigned below, to conduct an

interview in an effort to expedite prosecution in connection with the present application.

Attached hereto is a marked-up version of the changes made to the application by this Amendment.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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0425-0836P

Attachment: Version with Markings to Show Changes Made

VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS:

The claims have been amended as follows:

4. (Twice Amended) The method as claimed in claim 8, which is the compound (2) represented by the formula (II) wherein n is zero to 20; R represents an alkyl or alkenyl group having 13 to 21 carbon atoms, X^1 represents a hydrogen atom, an alkyl or acyl group having 1 to 22 carbon atoms[,] or an alkenyl group having 2 to 22 carbon atoms[, or a counter ion (when n is not zero, the counter ion is excluded)].

8. (Twice Amended) A method of activating a plant by applying a plant-activating agent to the plant, said plant-activating agent is capable of promoting growth of the plant by itself and is a compound of formula (II),

$$RCOO(AO)_nX^1 \qquad (II)$$

wherein R represents an alkyl or alkenyl group having 11 to 29 carbon atoms; X^1 represents a hydrogen atom, an alkyl or acyl group having 1 to 30 carbon atoms[,] or an alkenyl group having 2 to 30 carbon atoms[, or a counter ion]; AO represents at least one group selected from oxyethylene, oxypropylene and oxybutylene groups and may be random or block; and n represents an average number of moles added and is zero to 30.

10. (Amended) A plant-activating composition comprising a plant-activating agent and a fertilizer agent, said plant-activating agent is a compound of formula (II),

$RCOO(AO)_nX^1$ (II)

wherein R represents an alkyl or alkenyl group having 11 to 29 carbon atoms; X^1 represents a hydrogen atom, an alkyl or acyl group having 1 to 30 carbon atoms[,] or an alkenyl group having 2 to 30 carbon atoms[, or a counter ion]; AO represents at least one group selected from oxyethylene, oxypropylene and oxybutylene groups and may be random or block; and n represents an average number of moles added and is zero to 30[; wherein when n is zero and X^1 is a counter ion, then R has an even number of carbon atoms].